

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORTEZ K. CARTER,

Defendant-Appellant.

UNPUBLISHED
February 25, 2003

No. 238123
Wayne Circuit Court
LC No. 01-012902

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82, discharging a firearm at a dwelling, MCL 750.234b, and possession of a firearm during the commission of a felony, MCL 750.227b.¹ He was sentenced to concurrent terms of five months to four years and ten months to four years in prison for felonious assault and discharging a firearm at a dwelling, respectively, and to a consecutive two-year term for felony-firearm. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court clearly erred when it concluded that the victim's in-court identification of him as the perpetrator was valid and untainted. We disagree. To establish that an identification procedure resulted in the denial of due process, a defendant must show that the procedure was so suggestive under the totality of the circumstances that it led to a substantial likelihood of misidentification. *People v Williams*, 244 Mich App 533, 542; 624 NW2d 575 (2001). If a witness is exposed to an impermissibly suggestive pretrial identification procedure, his in-court identification of the defendant will not be allowed unless the prosecutor establishes by clear and convincing evidence that the in-court identification has an untainted, independent basis. *People v Gray*, 457 Mich 107, 115; 577 NW2d 92 (1998). The determination whether an in-court identification has an independent basis is factual, and we review the trial court's findings of fact for clear error. *Id.*

¹ Defendant was originally charged with assault with intent to commit murder, MCL 750.83, discharging a firearm at a dwelling, and felony-firearm as a result of an incident in which shots were fired into a residence.

Here, there is no basis for concluding that Hughey's in-court identification of defendant as the perpetrator was tainted because no pretrial identification procedure (live lineup, photographic lineup, or show up) was conducted. *Gray, supra*. Furthermore, as noted by the trial court, the victim's daughter identified defendant as the person who made a threatening telephone call to the residence shortly before shots were fired into the home. In addition, defendant was identified as the person who pointed a gun at the victim's home. The trial court noted that the victim had known defendant for several years, and found that the lighting was sufficient to allow the victim to see that defendant was holding a gun. Under the circumstances, the weight and credibility of the victim's in-court identification of defendant was for the trier of fact. *People v Barclay*, 208 Mich App 670, 676; 528 NW2d 842 (1995). No error occurred.

Next, defendant argues that insufficient evidence was produced to establish that he perpetrated the incident. We disagree. When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990). The trial court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), *aff'd* by equal division 462 Mich 71; 611 NW2d 783 (2000).

The victim testified that when she heard a vehicle drive up to her residence, she looked out the window and saw a vehicle carrying defendant as a passenger driving slowly past the residence. Defendant was pointing a gun at the residence. She knew defendant as her daughter's former boyfriend, and she was aware that defendant had threatened her daughter earlier in the evening. The victim was unequivocal in her identification of defendant as the person who pointed a gun at her residence, notwithstanding the fact that she observed him for only approximately one second.

The trial court, as the trier of fact, was entitled to accept Hughey's testimony as credible and to find that defendant was the person who fired shots into Hughey's residence. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The trial court's finding of fact was not clearly erroneous. MCR 2.613(C); *Hermiz, supra*. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's convictions. *Petrella, supra*.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra